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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,794	02/06/2002	Phillip Hyun	300.257	4493
7590	07/02/2004		EXAMINER	
FULBRIGHT & JAWORSKI L.L.P. 801 Pennsylvania Avenue, N.W. Washington, DC 20004-2615			ZURITA, JAMES H	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/066,794	HYUN, PHILLIP	
	<b>Examiner</b>	<b>Art Unit</b>	
	James H Zurita	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 May 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-26 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 28 May 2004 has been entered.

### ***Response to Amendment***

By his amendment of 28 May 2004, applicant amended independent claims 1, 11 and 20. Claims 1-26 are pending and will be examined.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Solomon (US PG-PUB US2002/0069134A1) in view of an article by Greg Farrell published on 15 November 1999 in USA Today, entitled, "Web finally opens door to new ways of buying ad space Sites allow media buyers to bypass salespeople, but some traditions may die hard."***

Solomon discloses systems, methods and apparatus for managing procurement of goods and services in a distributed environment. The various processes may be executed by using mobile agents. Buyers and sellers may track and continuously register the interaction activity with the agents' home bases (see, for example, at least paragraph 284).

Solomon discloses that buyers may request information concerning bundles of services (see at least paragraph 31). The system provides for vendor-side competition and bundling of services. The system permits accepting purchase requests, negotiation processes, modifying job orders and generating purchase authorizations. The system provides for identifying vendors, sending them availability queries and receiving their responses. After a reiterative process of negotiation, clients may place orders for the services and receive confirmation from the vendors that their orders have been fulfilled.

Solomon discloses the use of both static and mobile agents. However, Solomon **does not** specifically state that "...said first mobile agent configured to dynamically adjust to varying conditions..." It is well known that mobile agents are not tethered to specific applications and are not simply function calls but are goal-oriented and do not require user intervention. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Solomon and knowledge generally available to disclose mobile agent(s) configured to dynamically adjust to varying conditions. One of ordinary skill in the art at the time the invention was made would have been to combine Solomon and knowledge generally available to disclose mobile agent(s) configured to dynamically adjust to varying conditions for the obvious

reason that by permitting mobile agents to perform as they are designed, a user may save time that would otherwise be involved in programming and training his agent.

Solomon **does not** disclose his invention in terms of procurement of media resources for an advertising campaign. Advertising is a marketing tool and may be used in combination with sales promotions, personal selling and publicity.<sup>1</sup> However, Solomon discloses that his system continually analyzes streams of data in marketing promotion showcase databases (see at least paragraph 2). Solomon also suggests the need of purchasing, sales, marketing and production system to emulate how customers purchase services (see at least paragraphs 7 and 21). Solomon suggests inter-agent analysis of marketing trends and behavior. Within a marketing framework, Solomon discusses the use of detailed information in promotions, time-sensitive offers (see at least paragraph 23). Marketing is the process associated with promoting for sales goods or services, including all aspects of generating or enhancing demand for the product, including advertising and promotion.<sup>2</sup> *Farrell* discloses that several companies engage in business methods to sell media space in an advertising mix. *Farrell* discusses that agencies (applicant's media planner and buyer) submits request for bids for a media plan and that media vendors and outlets that want to contract quote prices.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Solomon and *Farrell* to include buying and selling of media services among the types of services suggested by Solomon. One of ordinary skill in the art at the time the invention was made would have been motivated to

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<sup>1</sup> Definition of Advertising, BARRON's Business Guides, Dictionary of Business Terms.

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combine Solomon and *Farrell* to include buying and selling of media services among the types of services suggested by Solomon for the obvious reason that media services for advertising campaigns may often be bought and sold like other types of services. By automating the plan-negotiate-contract process, businesses can decrease their advertising and marketing expenses and achieve higher levels of performance. In addition, by automating the tracking of media mix, perhaps by advertising campaign, one can compare the effectiveness of campaigns by different parameters. Market trends and behavior, as disclosed by Solomon, may be analyzed to sharpen the focus of media campaigns that are used by businesses to sell their products. Software such as disclosed by *Farrell* facilitate these efforts.

Neither Solomon nor *Farrell* specifically disclose "...pre-selected..." vendors. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The steps of transmitting, receiving, processing, creating and transmitting a mobile agent (1...nth) would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Further, this limitation of a vendor (...pre-selected...) is not positively recited and occurs as a precursor to the method steps recited in the claims. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to send and receive (1...n) mobile agents because such data **does**

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<sup>2</sup> Definition of Marketing, BARRON's Business Guides, Dictionary of Business Terms.

**not** functionally relate to the steps in the method claimed and because the subjective interpretation of the data **does not** patentably distinguish the claimed invention.

Neither Solomon nor *Farrell* specifically disclose "...the use of mobile agents to create a discrepancy notification..." Discrepancy is defined as the quality or state of being discrepant (being at variance, disagreeing).<sup>3</sup> Synonyms include difference, disagreement.<sup>4</sup> A buyer/seller may solve discrepancies by notifying the other party that something needs to be corrected, for example. Solomon discloses such corrections (for example, Abstract). Such corrections are common and critical in commerce and in electronic commerce. Where a party (vendor or seller or broker) is not able to send or receive "discrepancy notifications" that party loses business. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include disclose sending and receiving "discrepancy notifications." One of ordinary skill in the art at the time the invention was made to include disclose sending and receiving "discrepancy notifications" for the obvious reason that where a party **does not** provide such mechanisms to correct errors (human or otherwise) the party will lose customers. Their customers will go to other parties that provide such adjustment mechanism. The vendors may eventually go out of business.

**Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peckover, US Patent 6,119,101 in view of an article by Greg Farrell published on 15 November 1999 in USA Today, entitled, "Web finally opens door to new ways of buying**

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<sup>3</sup> Definition of *discrepancy*, MERRIAM WEBSTER'S Collegiate Dictionary.

ad space Sites allow media buyers to bypass salespeople, but some traditions may die hard."

Peckover discloses systems, methods and apparatus for the procurement of goods and services in a distributed environment with the use of intelligent agents. Peckover discloses that intelligent (mobile) agents may search for, negotiate and bundle offers and counteroffers among buyers and sellers. Peckover discloses the use of purchase requests, purchase order fulfillment, and tracking of various aspects of activity. Peckover discloses the use of both static and mobile agents. As noted previously, mobile agents are not tethered to specific applications and are not simply function calls but are goal-oriented and do not require user intervention.

Peckover **does not** specifically state that "...said first mobile agent configured to dynamically adjust to varying conditions..." It is well known that mobile agents are not tethered to specific applications and are not simply function calls but are goal-oriented and do not require user intervention. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Peckover and knowledge generally available to disclose mobile agent(s) configured to dynamically adjust to varying conditions. One of ordinary skill in the art at the time the invention was made would have been to combine Solomon and knowledge generally available to disclose mobile agent(s) configured to dynamically adjust to varying conditions for the obvious reason that by permitting mobile agents to perform as they are designed, a user may save time that would otherwise be involved in programming and training his agent.

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<sup>4</sup> MS/WORD Thesaurus.

Peckover **does not** specifically disclose his system in an advertising and marketing environment for media mix products. *Farrell* discloses that several companies engage in business methods to sell media space in an advertising mix. *Farrell* discusses that agencies (applicant's media planner and buyer) submits request for bids for a media plan and that media vendors and outlets that want to contract quote prices.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Peckover and *Farrell* to include buying and selling of media services among the types of services suggested by Peckover.

One of ordinary skill in the art at the time the invention was made would have been motivated to combine Peckover and *Farrell* to include buying and selling of media services among the types of services suggested by Peckover for the obvious reason that media services for advertising campaigns may often be bought and sold like other types of services. Using Peckover's intelligent agents with specified life times, one can provide vendors of services with recognizable offers for their offerings. Vendors and buyers of the various components of a media mix may plan their needs according to recognized supply and demand requirements.

Neither Peckover nor *Farrell* specifically disclose "...pre-selected..." vendors. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The steps of transmitting, receiving, processing, creating and transmitting a mobile agent (1...nth) would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the

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claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Further, this limitation of a vendor (...pre-selected...) is not positively recited and occurs as a precursor to the method steps recited in the claims. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to send and receive (1...n) mobile agents because such data **does not** functionally relate to the steps in the method claimed and because the subjective interpretation of the data **does not** patentably distinguish the claimed invention.

In addition, Pecover specifically discloses a Preference Manager function that maintains data concerning a participant's preferences, such as for a favorite brand, for example. It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Peckover to include "...pre-selected..." vendors.

One of ordinary skill in the art at the time the invention was made would have been motivated to extend Peckover to include "...pre-selected..." vendors for the obvious reason that business is often transacted on the basis of personal experiences and preferences. A buyer might have excellent experience with one vendor but horrible experiences with a second vendor. Similarly, a vendor might have a reputation of being unreliable. Some vendors might provide a greater discount to their favorite customers. Under such circumstances, it is common to select in advance those vendors with whom a person might wish to do business.

Neither Peckover nor *Farrell* specifically disclose "...the use of mobile agents to create a discrepancy notification..." Discrepancy is defined as the quality or state of

being discrepant (being at variance, disagreeing).<sup>5</sup> Synonyms include difference, disagreement.<sup>6</sup> A buyer/seller may solve discrepancies by notifying the other party that something needs to be corrected, for example. Peckover discloses such corrections (for example, Abstract). Such corrections are common and critical in commerce and in electronic commerce. Where a party (vendor or seller or broker) is not able to send or receive "discrepancy notifications" that party loses business. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include disclose sending and receiving "discrepancy notifications." One of ordinary skill in the art at the time the invention was made to include disclose sending and receiving "discrepancy notifications" for the obvious reason that where a party **does not** provide such mechanisms to correct errors (human or otherwise) the party will lose customers. Their customers will go to other parties that provide such adjustment mechanism. The vendors may eventually go out of business.

### ***Response to Arguments***

Applicant's arguments filed 28 May 2004 have been fully considered but they are not persuasive.

Applicant argues that the limitation "...said first mobile agent configured to dynamically adjust to varying conditions..." is not taught or suggested by the references.

In response to this argument, both Solomon and Peckover teach the use of mobile agents as well as static agents. Mobile agents, **by definition**, are not tethered

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<sup>5</sup> Definition of *discrepancy*, MERRIAM WEBSTER'S Collegiate Dictionary.

to specific applications and are not simply function calls but are goal-oriented and do not require user intervention.

Therefore, applicant's arguments concerning the absence of a teaching concerning mobile agents is not persuasive.

Again, the Examiner cites particular columns and line numbers in the references as applied to the claims for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Again, a "traverse" is a denial of an opposing party's allegations of fact.<sup>7</sup> The Examiner respectfully submits that applicants' arguments and comments *do not* traverse what Examiner regards as knowledge that would have been generally available to one of ordinary skill in the art at the time the invention was made. Even if one were to interpret applicants' arguments and comments as constituting a traverse, applicants' arguments and comments *do not* constitute an adequate traverse because applicant has not specifically pointed out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 27 CFR 1.104(d)(2), MPEP 707.07(a). An adequate traverse must contain adequate information or argument to create on its

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<sup>6</sup> MS/WORD Thesaurus.

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face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art. In re Boon, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971).

If applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). MPEP 2144.03

#### Reliance on Common Knowledge in the Art or "Well Known" Prior Art.

In view of applicant's failure to traverse, at least the following is admitted prior art:

- One of ordinary skill in the art at the time the invention was made would have been motivated to combine Solomon and *Farrell* to include buying and selling of media services among the types of services suggested by Solomon for the obvious reason that media services for advertising campaigns may often be bought and sold like other types of services. By automating the plan-negotiate-contract process, businesses can decrease their advertising and marketing expenses and achieve higher levels of performance. In addition, by automating the tracking of media mix, perhaps by advertising campaign, one can compare the effectiveness of campaigns by different parameters.
- Market trends and behavior, as disclosed by Solomon, may be analyzed to sharpen the focus of media campaigns that are used by businesses to sell their products. Software such as disclosed by *Farrell* facilitate these efforts.
- One of ordinary skill in the art at the time the invention was made would have been motivated to combine Peckover and *Farrell* to include buying and selling of media services among the types of services suggested by Peckover for the obvious reason that media services for advertising campaigns may often be bought and sold like other types of services. Using Peckover's intelligent agents with specified life times, one can provide vendors of services with recognizable offers for their offerings. Vendors and buyers of the various components of a media mix may plan their needs according to recognized supply and demand requirements.
- ... media services for advertising campaigns may often be bought and sold like other types of services. By automating the plan-negotiate-contract process, businesses can decrease their advertising and marketing expenses and achieve higher levels of performance. In addition, by automating the tracking of media mix, perhaps by advertising campaign, one can compare the effectiveness of campaigns by different parameters. Market trends and behavior, as disclosed by Solomon, may be analyzed to sharpen the focus of media campaigns that are used by businesses to sell their products. Software such as disclosed by *Farrell* facilitate these efforts.
- ...media services for advertising campaigns may often be bought and sold like other types of services. Using Peckover's intelligent agents with specified life times, one can provide vendors of services with recognizable offers for their offerings. Vendors

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<sup>7</sup> Definition of Traverse, Black's Law Dictionary, "In common law pleading, a traverse signifies a denial."

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and buyers of the various components of a media mix may plan their needs according to recognized supply and demand requirements.

- ...business is often transacted on the basis of personal experiences and preferences. A buyer might have excellent experience with one vendor but horrible experiences with a second vendor. Similarly, a vendor might have a reputation of being unreliable. Some vendors might provide a greater discount to their favorite customers. Under such circumstances, it is common to select in advance those vendors with whom a person might wish to do business.
- ... Discrepancy is defined as the quality or state of being discrepant (being at variance, disagreeing).<sup>8</sup> Synonyms include difference, disagreement.<sup>9</sup> A buyer/seller may solve discrepancies by notifying the other party that something needs to be corrected, for example. Solomon discloses such corrections (for example, Abstract). Such corrections are common and critical in commerce and in electronic commerce. Where a party (vendor or seller or broker) is not able to send or receive "discrepancy notifications" that party loses business. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include disclose sending and receiving "discrepancy notifications." One of ordinary skill in the art at the time the invention was made to include disclose sending and receiving "discrepancy notifications" for the obvious reason that where a party does not provide such mechanisms to correct errors (human or otherwise) the party will lose customers. Their customers will go to other parties that provide such adjustment / correction mechanisms...The vendors may eventually go out of business.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*David Wong, Noemi Paciorek, Dana Moore. "Java-based mobile agents"*

Association for Computing Machinery. Communications of the ACM. New York: Mar 1999. Vol. 42, Iss. 3; pg. 92, 10 pgs, downloaded from ProQuest, on the Internet, on 24 June 2004.

*Maes, Pattie. "Agents that reduce work and information overload Association for Computing Machinery. Communications of the ACM. New York: Jul 1994. Vol. 37, Iss. 7; pg. 30, 11 pgs, downloaded from ProQuest, on the Internet, on 24 June 2004.*

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<sup>8</sup> Definition of *discrepancy*, MERRIAM WEBSTER'S Collegiate Dictionary.

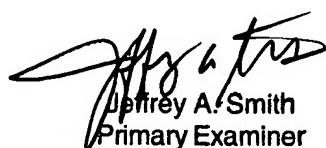
Irene Grief, Desktop Agents in group-enabled Products" Association for Computing Machinery. Communications of the ACM. New York, July 1994, vol. 37, Iss, 7, page 100, 6 pages, downloaded from ProQuest, on the Internet, on 24 June 2004.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James H Zurita whose telephone number is 703-605-4966. The examiner can normally be reached on 8a-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 703-308-3588. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

James Zurita  
Patent Examiner  
Art Unit 3625  
24 June 2004

  
Jeffrey A. Smith  
Primary Examiner